FILE COPY

APR 27 193

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, MEMBERS OF AND COMPOSING SOUTH CAROLINA TAX COMMISSION, RESPONDENTS.

REPLY ARGUMENT FOR APPELLANT.

P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Appellant.

INDEX.

Subject Index.

Reply argument for appellant:	Page
The new rule recently established as to the taxation of intangibles is not confined to inheritance taxation.....	1
The tax in question is not a tax on the "facilities used"....	3
Authorities relied on in Harvard Law Review not controlling of or applicable to present case.....	7

Authorities Cited in the Brief.

Table of Cases.

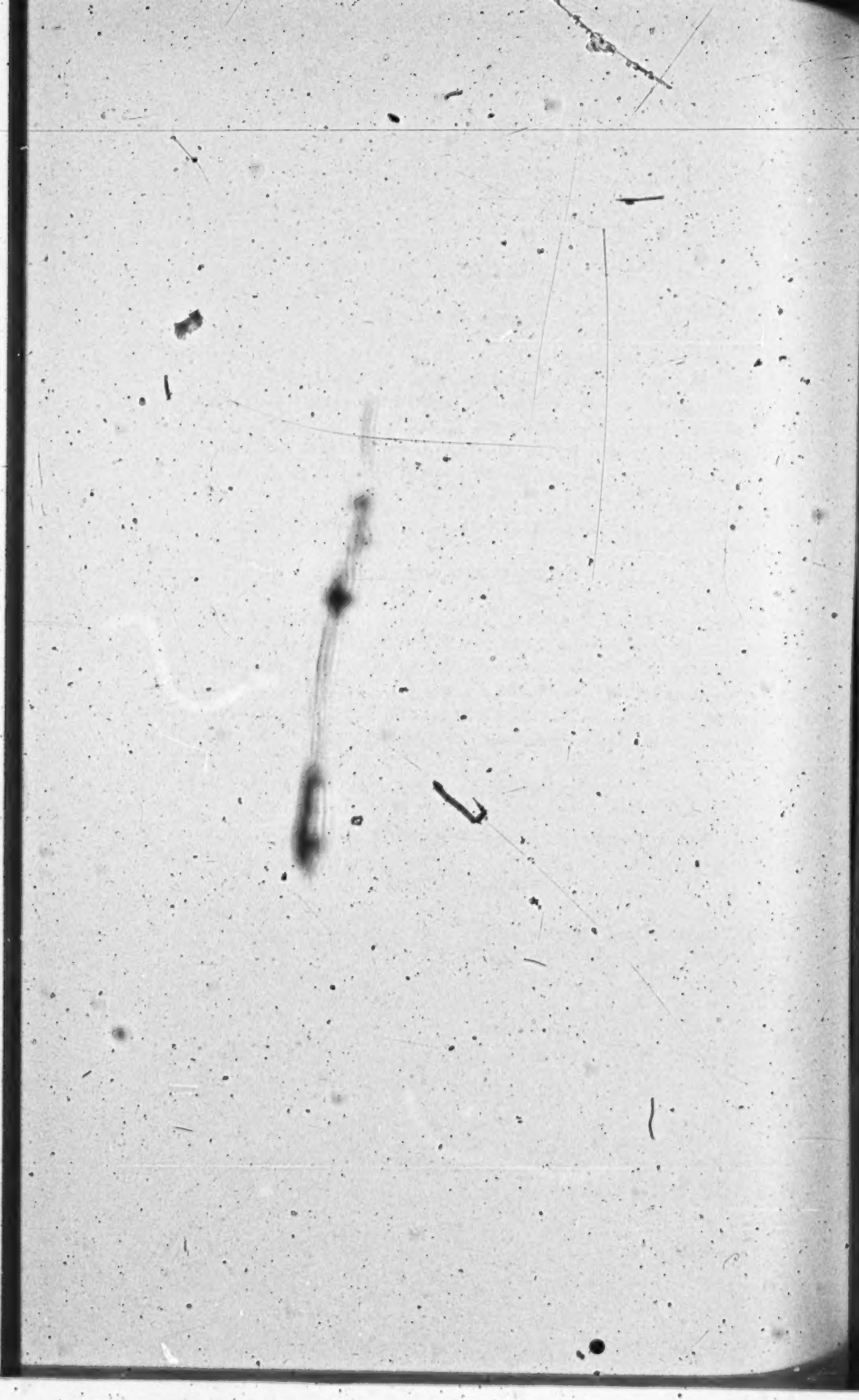
Blackstone vs. Miller, 188 U. S., 189.....	7
Compania De Tóbacos vs. Collector, 275 U. S., 295.....	7
Farmers Loan & Trust Company vs. Minnesota, 280 U. S., 204.	2
Nicol vs. Ames, 173 U. S., 509-519.....	3, 4
Palmetto Fire Ins. Co. vs. Connecticut, 272 U. S., 295.....	7
Safe Deposit and Trust Company vs. Virginia, 280 U. S., 83....	2

Statutes Cited.

United States Statutes at Large, Volume 30, page 451.....	4

Textbook Cited.

Cooley on Taxation, Section 1673.....	6



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930

No. 596

GRANITEVILLE MANUFACTURING COMPANY,
APPELLANT,

vs.

W. G. QUERY, J. P. DERHAM, AND F. C. ROBINSON, MEMBERS OF AND COMPOSING SOUTH CAROLINA TAX COMMISSION, RESPONDENTS.

REPLY ARGUMENT FOR APPELLANT.

Replying to appellees' argument and to the editorial note as to this case appearing in the *Harvard Law Review*, which is appended to appellees' argument, we ask to observe:

(1) The New Rule Recently Established as to the Taxation of Intangibles is not Confined to Inheritance Taxation.

Both appellees' counsel and the editor of the *Harvard Law Review* assume that the recently established

rule as to the taxation of intangibles is confined to inheritance or succession taxation alone. This new rule is to the general effect, as stated in the decision of this Court in the Minnesota case (Farmers Loan & Trust Company *vs.* Minnesota, 280 U. S. 204), that "*intangibles may be properly taxed at the domicile of their owner*" and not in any other State. As we have set out at page six of our argument in chief, there are five recent decisions upon this subject. Four of them are succession or inheritance-tax cases, but the fifth of these decisions, Safe Deposit and Trust Company *vs.* Virginia, 280 U. S. 83, was not an inheritance-tax case, but dealt with a distinctly different field of taxation, namely, *property taxation.* In it, this Court allowed the taxation of intangibles only at the domicile of their legal owner, applying, in doing so, the general principle involved.

At pages 12-13 of our argument in chief, we have pointed out that the whole field of taxation is divided into three parts: (1) property taxation, (2) capitation taxation, and (3) excise taxation. Inheritance taxation is but a subdivision of excise taxation. Hence it would seem that when this Court has applied the principle of the new rule as to the taxation of intangibles, namely, that they may be taxed and that they have a taxable *situs* alone at the domicile of their owner, to so widely separated subjects of taxation as inheritance taxation and property taxation, it would seem that the intention of this Court certainly is that the new rule is to cover the whole field of taxation. Docu-

mentary-stamp taxation is but another subdivision of excise taxation.

We further submit that there can be no logical reason for confining the new rule of the taxation of intangibles to inheritance taxation alone. The *raison d'etre* of the new rule was, as this Court expressed it, *the protection of negotiable securities from oppressive taxation.* To forbid such multiple taxation in the field of inheritance taxation and to allow it by another name, in another field of taxation (for example, the possibility of two State documentary-stamp taxes), would be, we submit, to stop far short of the objective intended by this Court.

(2) The Tax in Question is not a Tax on the "Facilities Used."

Appellees' counsel seeks to justify the tax in question under the case of Nicol *vs.* Ames, 173 U. S. 509-519, by stating that it is a tax upon the facilities used in the execution of the notes in question, the idea being that because the President of the plaintiff corporation used a pen and a desk and a blotter in South Carolina that the tax is legal. Even were his contention as to the nature of the tax correct, the fundamental principle against multiple taxation, etc., involved in this case would remain, but, as counsel's argument is practically confined to the idea that the thing taxed is the facilities used in the signing of the notes in South Carolina, we ask to call the following consideration to the Court's attention.

Counsel overlooks the fact that in the excerpt quoted by him from the decision of this Court in Nicol *vs.* Ames, two taxes are plainly referred to. One of these taxes was a tax upon the complicated facilities used in the great Chicago Stock Exchange, and the other, which was described as the tax *"laid in the same act upon a broker's note,"* was denominated not as a tax upon the facilities used, but as *"a tax on the note or memorandum itself."*

It will be found that the South Carolina Documentary Stamp Tax Act in its main clause is copied verbatim from the Emergency War Expenditures Act passed by Congress on June 13, 1898. See United States Statutes at Large, Volume 30, page 448. The language enacting a documentary stamp tax is found at page 451. Schedule *A* of the Act of Congress is found at page 458. In two separate paragraphs, Schedule *A* levies the two separate taxes referred to in Nicol *vs.* Ames. In the margin of the report referred to in appellees' argument, *the second paragraph alone of Schedule A is set out.* Said paragraph set out in the margin at page 513 of 173 U. S. Reports is a tax upon sales made "at any exchange or board of trade," and in the proviso requires that each sale be reduced to a memorandum, evidently for the purpose of permitting it to be taxed by affixing a stamp thereto. This Court held in the decision in question that that tax was a tax upon the facilities used and not upon the memorandum itself. The tax levied in the paragraph in question is, however, not the one that we are dealing with in the instant case.

In the first paragraph of Schedule *A* (which is

omitted from the margin of 173 U. S., p. 513) another stamp tax is levied upon "bonds, debentures or certificates of indebtedness * * * agreements to sell, or memoranda of sales or deliveries or transfers of shares." In the penalty clause "brokers" are referred to. In the decision of the Court, at page 519, the Court points out that in addition to the tax upon facilities set out in the second paragraph of Schedule *A*, that there is another tax laid "upon brokers' notes or memorandum of sale as a separate tax." The Court holds that this tax on brokers' notes or memorandum of sale "is a tax on the note or memorandum itself."

Hence the situation that we have is that the tax involved in the instant case, levied under the South Carolina Documentary Stamp Act, which is identical with that levied in the first paragraph of Schedule *A* of the War Emergency Act of 1898, is a tax levied directly upon bonds, debentures, certificates of indebtedness, including notes, *and is not, as counsel has argued it, a tax upon facilities used in the creation of said notes.* The statutory court herein ruled against appellees' counsel upon this point, holding specifically that the tax in question (R. 33) is *"levied directly on the documents themselves"*; and, at R. 37, "the tax is laid upon the documents themselves."

Hence we submit that undoubtedly Nicol *vs.* Ames is not authority for the idea that the "facilities used" by the President of the appellant company in signing the notes, such as a pen, a desk, and a blotter, may for their use be taxed the sum of more than five

thousand dollars; but that the Nicol decision establishes the fact to the contrary that the tax is laid directly upon the notes as a species of excise tax known as a documentary tax, and that the vital and pivotal question is that of where the taxable *situs* of said notes exists and where such pieces of paper actually became notes; and we submit that the answer to that question is that said notes have a taxable *situs* under the new rule as to the taxation of intangibles only at the domicile of their owners in New York, Boston, and Augusta, Georgia, and that the pieces of paper involved actually became notes only when they were actually received and accepted as notes in New York, Boston, and Augusta.

Appellees' counsel in arguing this case has been in the habit of simply stating that the tax in question is an excise tax and of inferring that therefore South Carolina may maintain its legality. We learn, however, from Section 1673 of Cooley on Taxation that excise taxation is a generic term, and that excise taxation falls into many specific subdivisions, such as (1) license taxation, (2) franchise taxation, (3) sales taxation, (4) inheritance taxation, (5) documentary-stamp taxation, and so on. This Court has banned the double or multiple taxation of intangibles in that subdivision of excise taxation known as inheritance taxation and has confined the taxable *situs* to the domicile of the owner of the intangibles. Our effort herein is simply to apply the same wise principle to that other subdivision of excise taxation known as documentary-stamp taxation.

(3) Authorities Relied on in Harvard Law Review not Controlling of or Applicable to Present Case.

The article referred to relies upon the decisions of this Court in Palmetto Fire Insurance Company *vs.* Connecticut, 272 U. S. 295, and in Compania De Tobacos *vs.* Collector, 275 U. S. 87, as establishing the fact that "the whole course of decisions in excise-tax cases permit multiple taxation of activities which transcend State lines."

In so far as the implication is that therefore a negotiable instrument may now and since the promulgation of the new rule announced in the Minnesota case against multiple taxation of intangibles be subjected to double taxation, we reply that the decisions referred to are not now authorities to such effect, for

(*a*) The Palmetto Fire Insurance case was based on the old rule enunciated in Blackstone *vs.* Miller, 188 U. S. 189, namely, that the State imposing the double taxation lent the protection of its laws to the transaction, and hence was entitled to even multiple taxation therefor. With the abrogation of this rule all multiple taxation decisions based thereon have ceased to be controlling, we submit; and,

(*b*) Both decisions are as to license taxation and deal solely with the right to impose license taxation upon business done in the State imposing the tax, although part of the business done may have been accomplished in another State.

In the instant case the tax imposed is specifically not a license tax. If it were, we would and do con-

tend that multiple taxation of negotiable paper is not now allowable; but until South Carolina passes an act *taxing the business of signing notes* the effect of decisions as to license taxation is not pertinent or controlling.

Respectfully submitted,

P. F. HENDERSON,
HENDERSONS & SALLEY,
Appellant's Counsel.